

State of South Dakota

EIGHTIETH LEGISLATIVE ASSEMBLY, 2005

916L0089

SENATE BILL NO. _____

Introduced by: _____

1 FOR AN ACT ENTITLED, An Act to HAND-UNLAWFUL USE OF WEAPONS.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 22-14-5 be amended to read as follows:

4 22-14-5. Any person who possesses any firearm on which the manufacturer's serial number
5 has been changed, altered, removed, or obliterated is guilty of a Class 6 felony.

6 ~~This~~ The provisions of this section ~~does~~ do not apply to persons who have applied for a new
7 serial number pursuant to § 23-7-43.

8 Section 2. That § 22-14-6 be amended to read as follows:

9 22-14-6. Any person who knowingly possesses a controlled weapon is guilty of a Class 6
10 felony. ~~Provided that,~~ However, the provisions of this section ~~shall~~ do not apply to a any person
11 who:

12 (1) Is a law enforcement officer or member of the armed forces of the United States or
13 South Dakota National Guard acting in the lawful discharge of ~~his~~ duties;

14 (2) Has a valid state or federal license issued pursuant to law for such weapon or has
15 registered such weapon with the proper state or federal authority pursuant to law;

16 (3) Possesses a controlled weapon briefly after having found it or taken it from an



1 ~~aggressor~~ offender; or

2 (4) Possesses a controlled weapon, except a machine gun or short shotgun, under
3 circumstances which negate any purpose or likelihood that the weapon would be used
4 unlawfully.

5 Section 3. That § 22-14-7 be amended to read as follows:

6 22-14-7. Any person who:

7 (1) Recklessly discharges a firearm or recklessly shoots a bow and arrow;

8 (2) Sets a device designed to activate a weapon upon being tripped or approached, and
9 leaves it the device unmarked or unattended by a competent person; or

10 (3) Has in ~~his~~ personal possession a loaded firearm while ~~he is~~ intoxicated;

11 is guilty of a Class 1 misdemeanor.

12 Section 4. That § 22-14-8 be amended to read as follows:

13 22-14-8. Any person who conceals on or about his or her person a controlled or dangerous
14 weapon with intent to commit a felony is guilty of a Class 5 felony.

15 Section 5. That § 22-14-9 be amended to read as follows:

16 22-14-9. Any person, other than a law enforcement officer ~~when acting as such, is guilty of~~
17 ~~a Class 1 misdemeanor if he~~ under color of authority, who:

18 (1) Carries a pistol or revolver, loaded or unloaded, concealed on or about his or her
19 person without a permit as provided in chapter 23-7; or

20 (2) Carries a pistol or revolver, loaded or unloaded, concealed in any vehicle ~~operated~~
21 ~~by him~~ while operating the vehicle, without a permit as provided in chapter 23-7;

22 is guilty of a Class 1 misdemeanor.

23 Section 6. That § 22-14-9.1 be amended to read as follows:

24 22-14-9.1. No person may possess a concealed pistol in accordance with chapter 23-7 or this

chapter unless that person also has in his or her physical possession a valid South Dakota permit to carry a concealed pistol or a permit effective pursuant to § 23-7-7.3. ~~Any~~ violation of this section is a petty offense. However, if within twenty-four hours of being charged with a violation of this section, the person produces a permit to carry a concealed pistol which was valid at the time of the alleged offense in the office of the officer making the demand, the charge shall be dismissed.

Section 7. That § 22-14-9.2 be amended to read as follows:

22-14-9.2. Any person who is permitted to carry a concealed pistol in a state with which the secretary of state has entered into a reciprocity agreement pursuant to §§ 23-7-7.3, 22-14-9.1, 22-14-9.2, 23-7-7, 23-7-7.1, and 23-7-8 may carry a concealed pistol in this state if the permit holder carries the pistol in compliance with the laws of this state. ~~Any~~ violation of this section is a Class 1 misdemeanor.

Section 8. That § 22-14-10 be amended to read as follows:

22-14-10. ~~Section 22-14-9 does~~ The provisions of § 22-14-9 do not apply to persons who carry one or more any person carrying any unloaded ~~pistols~~ pistol or ~~revolvers~~ revolver for the purpose of, or in connection with, any lawful use, if the unloaded ~~weapon or weapons are~~ pistol or revolver is carried:

- (1) In the trunk or other closed compartment of a vehicle; or
- (2) In a closed container which is too large to be effectively concealed on the person or within ~~his~~ the person's clothing. The container may be carried in a vehicle or in any other manner.

~~Any~~ No person who complies with this section may ~~not~~ be required to obtain a permit for the lawful uses ~~herein~~ described in this section.

Section 9. That § 22-14-11 be amended to read as follows:

22-14-11. ~~Section 22-14-9 shall~~ The provisions of § 22-14-9 do not apply to any person who
possesses a pistol or revolver in his or her own dwelling house or place of business or on land
owned or rented by ~~him~~ himself or herself or by a member of his or her household.

Section 10. That § 22-14-12 be amended to read as follows:

22-14-12. Any person who commits or attempts to commit any felony ~~when~~ while armed
with a firearm, including a machine gun or short shotgun, is guilty of a Class 2 felony for the
first conviction. A second or subsequent conviction is a Class 1 felony. The sentence imposed
for a first conviction under this section shall carry a minimum sentence of imprisonment in the
state penitentiary of five years. In case of a second or subsequent conviction under this section
such person shall be sentenced to a minimum imprisonment of ten years in the penitentiary.

Any sentence imposed under this section ~~shall~~ may be consecutive to any other sentences
imposed for a violation of the principal felony. ~~Notwithstanding any other provision of law, the~~
The court shall may not place on probation, suspend the execution of the sentence, or suspend
the imposition of the sentence of any person convicted of a violation of this section.

Section 11. That § 22-14-13.1 be repealed.

~~22-14-13.1. Any person who commits or attempts to commit any felony when armed with
a stun gun is guilty of a Class 5 felony for the first conviction. A second or subsequent
conviction is a Class 3 felony. Any sentence imposed under this section shall be consecutive to
any other sentences imposed for a violation of the principal felony.~~

Section 12. That § 22-14-14 be amended to read as follows:

22-14-14. A violation of § 22-14-12 shall be charged in the indictment or information as a
separate count in addition to the principal felony or attempted felony alleged to have been
committed. No offense may be charged under those sections ~~when~~ if the use of a dangerous
weapon is a necessary element of the principal felony alleged to have been committed or

1 attempted.

2 Section 13. That § 22-14-15 be amended to read as follows:

3 22-14-15. No person who has been convicted in this state or elsewhere of a crime of
4 violence or a felony ~~under chapter 22-42, other than pursuant to § 22-42-5 or 22-42-6 pursuant~~
5 ~~to § 22-42-2, 22-42-3, 22-42-4, 22-42-7, 22-42-8, 22-42-9, 22-42-10 or 22-42-19,~~ may possess
6 or have control of a firearm. A violation of this section is a Class 6 felony. ~~This~~ The provisions
7 of this section ~~does~~ do not apply to any person who was last discharged from prison, jail,
8 probation, or parole, ~~for a crime of violence or a felony under chapter 22-42, other than pursuant~~
9 ~~to § 22-42-5 or 22-42-6,~~ more than fifteen years prior to the commission of the principal
10 offense.

11 Section 14. That § 22-14-16 be amended to read as follows:

12 22-14-16. Any person who knows that another person is prohibited by § 22-14-15 or 22-14-
13 15.1 from possessing a firearm, and who knowingly gives, loans, or sells a firearm to that person
14 is guilty of a Class 6 felony.

15 Section 15. That § 22-14-17 be amended to read as follows:

16 22-14-17. ~~This~~ The provisions of this chapter ~~does~~ do not apply to any firearm which has
17 been permanently altered so it is incapable of being discharged.

18 Section 16. That § 22-14-19 be repealed.

19 ~~— 22-14-19. No person may own, possess, or sell a ballistic knife. A ballistic knife is a knife~~
20 ~~encased in a tubular metal sheath which when removed, uncovers a detachable blade that can~~
21 ~~be propelled by a spring mechanism operated at the push of a button. A violation of this section~~
22 ~~is a Class 1 misdemeanor.~~

23 Section 17. That § 22-14-20 be amended to read as follows:

24 22-14-20. Any person who willfully, knowingly, and illegally discharges a firearm at an

1 occupied structure, ~~structure capable of being occupied~~, or motor vehicle is guilty of a ~~Class 5~~
2 Class 3 felony. ~~However, if a violation of this section results in bodily injury which is directly~~
3 ~~caused by such discharge, such person is guilty of a Class 4 felony.~~

4 Section 18. That § 22-14-21 be amended to read as follows:

5 22-14-21. Any person who willfully, knowingly, and illegally discharges a firearm from a
6 moving motor vehicle within the incorporated limits of a municipality under circumstances not
7 constituting a violation of § 22-14-20 is guilty of a Class 6 felony. ~~However, if a violation of~~
8 ~~this section results in bodily injury which is directly caused by such discharge, such person is~~
9 ~~guilty of a Class 5 felony.~~

10 Section 19. That § 22-14-22 be amended to read as follows:

11 22-14-22. For the purposes of §§ 22-14-23 to 22-14-28, inclusive, the term, county
12 courthouse, means the state capitol ~~and~~ or any building occupied for the public sessions of a
13 circuit court, with its various offices. The term includes any building appended to or used as a
14 supplementary structure to ~~the~~ a county courthouse.

15 Section 20. That § 22-14-23 be amended to read as follows:

16 22-14-23. Except as provided in § 22-14-24, any person who knowingly possesses or causes
17 to be present a any firearm or other dangerous weapon, in any county courthouse, or attempts
18 to do so, is guilty of a Class 1 misdemeanor.

19 Section 21. That § 22-14-24 be amended to read as follows:

20 22-14-24. The provisions of § 22-14-23 do not apply to:

- 21 (1) The lawful performance of official duties by an officer, agent, or employee of the
22 United States, the state, political subdivision thereof, or a municipality, who is
23 authorized by law to engage in or supervise the prevention, detection, investigation,
24 or prosecution of any violation of law or an officer of the court;

(2) Possession by a judge or magistrate;

(3) The possession of a firearm or other dangerous weapon by a federal or state official or member of the armed services if such possession is authorized by law; or

(4) The lawful carrying of firearms, or other dangerous weapons in a county courthouse incident to hunting, or gun safety course or to other lawful purposes.

Section 22. That § 22-14-25 be amended to read as follows:

22-14-25. Nothing in this chapter limits the power of a court to punish for contempt or to promulgate rules or orders regulating, restricting, or prohibiting the possession of weapons, within any building housing such court or any of its proceedings, or upon any grounds pertinent to such building.

Section 23. That § 22-14-26 be amended to read as follows:

22-14-26. Notice of the provisions of ~~this chapter~~ § 22-14-23 shall be posted conspicuously at each public entrance to each county courthouse.

Section 24. That § 22-14-27 be amended to read as follows:

22-14-27. It is not a defense to a prosecution under § 22-14-23 that the defendant was the holder of a concealed weapons permit issued pursuant to §§ 23-7-7 and 23-7-7.1.

Section 25. That § 22-14-28 be amended to read as follows:

22-14-28. By a majority of the members-elect, the county commission in any county may elect to waive the provisions of ~~§§ 22-14-22 to 22-14-27, inclusive~~ § 22-14-23.

Section 26. That § 22-14-29 be repealed.

~~22-14-29. No person under the age of eighteen may own, possess, or carry a butterfly/balisong knife. A butterfly/balisong knife is a knife which is encased in a metal, wooden, or plastic sheath which when removed, uncovers a detachable blade that can be opened automatically by operation of inertia, gravity, or both. A violation of this section is a Class 1~~

1 ~~misdemeanor.~~

2 Section 27. That § 22-14-30 be amended to read as follows:

3 22-14-30. No person who has been convicted of a felony pursuant to ~~§ 22-42-5 or 22-42-6~~
4 under chapter 22-42 or of a felony for a crime with the same elements in another state may
5 possess or have control of a firearm. A violation of this section is a Class 6 felony. ~~This~~ The
6 provisions of this section does do not apply to any person who was last discharged from prison,
7 jail, probation, or parole, for a felony pursuant to ~~§ 22-42-5 or 22-42-6~~ under chapter 22-42 more
8 than five years prior to the commission of the principal offense and is not subject to the
9 restrictions in § 22-14-15.

10 Section 28. The code counsel shall renumber § 22-14-30 as § 22-14-15.1 and adjust all
11 appropriate cross references.

12 Section 29. That chapter 22-14 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 No person who has been convicted of any misdemeanor crime involving an act of domestic
15 violence may possess or have control of a firearm for a period of one year from the date of
16 conviction. Any violation of this section is a Class 1 misdemeanor.